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THE PRESENT STATUS OF GOVERNMENTAL REGULATION OF THE RAILROADS.

BY

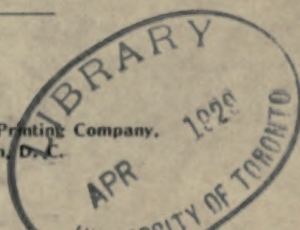
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THE PRESENT STATUS OF GOVERNMENTAL REGULATION OF THE RAILROADS.

The vitally important question of commercial liberty as opposed to governmental rate-making may incidentally arise in Congress during its present session, in the prospective debate on the centralization of power, but it is probable that the former question will not command serious attention before the convening of the 60th Congress on December 2, 1907. That will afford ample time to procure reliable data in proof of the correctness of the following propositions maintained in my recent pamphlet, entitled "Commercial Liberty and Governmental Regulation of the Railroads: "

1. Railroad rates are determined mainly by commercial forces to which the companies are compelled to yield.

2. Such compliance with commercial forces is now and has been for many years the custom of the entire country. It had its origin in the Act of Congress of June 15, 1866, commonly known as "The Charter of the American Railroad System."

3. The wonderful development of the resources of this country is mainly the result of such conformity of rates to commercial and industrial conditions.

4. The commercial bodies and leading commercial men of this country prefer commercial liberty to governmental rate-making in the belief that they will fare much better by dealing with railroad officers than by

depending upon the absolute decrees of a governmental administrative board or commission in the nature of bureaucratic government.

THE REGULATION AND NOT THE ADMINISTRATION OF THE RAILROADS.

One of the important constitutional questions having its origin in commercial and economic considerations, which now commands the attention of the country arises from the fact that since the retirement of Judge Cooley, first Chairman of the Interstate Commerce Commission, that body and all other influential proponents of governmental rate-making have not attempted to define the distinction between the *regulation* and the *administration* of the railroads or between the *regulation* and the *administration* of the commerce of the country. On the contrary the Commission has not only repudiated such distinction, vital to the genius of our institutions, but has earnestly recommended that it be clothed with autocratic powers over the commerce, the industries and the transportation interests of the country. Out of many expressions indicative of this purpose the following may be quoted :

In an argument addressed to the Senate Committee on Interstate Commerce on March 16, 1892, the Commission made the following astounding declaration :

"The commercial development of the country has outgrown the capacity of the common law and the ordinary judicial tribunals to adapt themselves, under certain circumstances, to the complete and effective administration of justice."

2. In its annual report for the year 1893 the Commission declared at pages 10 and 11 that it ought to be invested not only with the power to determine rates, but also with the power to determine the relative commercial status of the various towns, cities, sections and industries of this vast country. This was expressed as follows :

“To give each community the rightful benefit of location, to keep different commodities on an equal footing so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation.”

3. At page 59 of its ninth annual report, submitted December 2, 1895, the Commission said :

“The guardianship of the public interests so far as interstate commerce is concerned is, under existing law, intrusted to this Commission * * * to some extent every question of transportation involves moral and social consideration, so that a just rate cannot be determined independently of the theory of social progress. This argument is perhaps as indefinite as it is comprehensive.”

It seems to go without saying that these ideas are expressive of the most fantastic idealism. No legislative or administrative authority can ever be entrusted with the power to determine the course of the commercial or industrial development of this country as thus advocated by the Commission.

In the above-mentioned extracts from its official utterances the Commission rides rough-shod over the common law, over constitutional limitations, over the Federal judiciary and over fundamental commercial and economic

considerations, besides asserting that it of right possesses functions with which the Supreme Court has declared that it is not invested. Evidently the contentions of the Commission relate to the *administration*, involving the autocratic use of the railroads, and not to the *regulation* of the railroads as implied in the letter and spirit of our institutions.

The Constitution of the United States provides, under very sharp limitations with respect to the ports of one State over those of another that "Congress shall have power to *regulate* commerce among the States;" whereas the Interstate Commerce Commission and other advocates of governmental rate-making quite generally substitute for the word *regulate*, the words *supervise* and *control*, and other terms signifying *administration* contrary to the spirit and evident intent of the Constitution. All this appears to be radically at variance with the cardinal principles of commercial liberty which are of the very genius of our institutions.

In his speeches at Harrisburg and at York, Pa., on Oct. 4, 1906, President Roosevelt declared that the United States Government has and is to exercise a constantly increasing and constantly more effective *supervision and control* over all the work of the great common carriers of the country and over the work of all the great corporations which directly or indirectly do any interstate business.

These expressions were repeated in his annual message to Congress submitted Dec. 3, 1906.

In view of the fact that Secretary Root has recently declared himself in favor of the contralization of power in

the National Government it is possible that this subject may be debated in Congress during its present session. It necessarily involves important considerations affecting the subject of commercial liberty, to which attention is here particularly directed.

THE ESTABLISHMENT OF BUREAUCRATIC GOVERNMENT IN THE UNITED STATES.

In my recent pamphlet issued Nov. 12, 1906, I have shown that such violations of commercial liberty as those therein mentioned inevitably lead to bureaucracy, and in a pamphlet entitled "The Regulation of Commerce Through a Dispensing Power" published in the year 1903, I have described the evils of the bureaucratic form of government. Suffice it to add in this connection that bureaucratic government is "as destructive of individual character" and "as strikingly exhibits the degrading effect of pure socialism and especially of its extreme form, communism.*

In case the governmental regulation of the railroads shall become a political issue, which now appears probable, the subject of establishing the bureaucratic methods of governmental administration in this country will command serious attention.

*President Roosevelt in his last annual message to Congress.

THE ATTEMPT TO SECURE A JUDICIAL OPINION IN FAVOR OF THE ASSERTION THAT THE ACT OF JUNE 30, 1906, CONFERS UPON THE COMMISSION THE POWER TO PRESCRIBE RATES.

On Nov. 19, 1906, the Interstate Commerce Commission decided in the case of the Cattle Growers' Association of Texas, that under the authority of Section 15, of the Act to Regulate Commerce, as amended by the Act of June 30, 1906, it has the authority to prescribe rates for the future. This opinion of the Commission awaits the approval of the Federal judiciary, and, therefore, commands the earnest attention of all persons who favor *just regulation* of the railroads as distinguished from *autocratic governmental administration of the railroads*.

I venture the opinion that the Supreme Court of the United States will dispose of this assumption by the Commission, as it disposed of the claim to the power of rate-making in the famous Maximum Rate Case, 167 U. S., 479.

A SPURIOUS ATTEMPT TO CREATE PREJU- DICE AGAINST THE RAILROADS.

The present shortage of railroad cars furnishes incontrovertible evidence of a commerce created by railroad facilities, but continually outgrowing the facilities afforded by the grandest system of transportation ever seen on this globe, and which from the beginning has ever and anon demanded more railroads, more cars, more locomotives and more employes at continually advancing wages in order to

meet the necessities of a constantly increasing traffic transported at constantly reduced rates. Nevertheless this symptom of national prosperity is continually being proclaimed as an evidence of the incompetency of railroad managers to perform their duty, and as evidence in favor of granting to the Interstate Commerce Commission the power to administer the railroad traffic interests of this country.

THE ANNOUNCED PURPOSE OF THE INTER-STATE COMMERCE COMMISSION TO INVESTIGATE ALL THE GREAT RAILROAD ORGANIZATIONS OF THE COUNTRY.

The recent movement of the Interstate Commerce Commission looking to the investigation of all railroad companies working in combination with competing railroads, appears to be in the nature of an effort to create public sentiment in favor of governmental administration of the railroads. Nevertheless, the movement commands attention as to the circumstances and conditions under which such organizations were formed. No person familiar with the history of the commercial development of this country can doubt that such organizations have been an inestimable agency for good, in securing the prosperity and happiness of the people, or that they have been a natural and inevitable feature of the evolution of railroad transportation in the United States. These combinations were suggested by, and are an inevitable result of the Act of June 15, 1866, commonly known as the "Charter of the American Railroad System." That Act provides—

"That every railroad company in the United States whose road is operated by steam, its successors and as-

signs, be, and is hereby, authorized to carry upon and over its roads, boats, bridges and ferries all passengers, troops, government supplies, mails, freight and property on their way from one State to another State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination."

R. S., Sec. 5258.

The lessons of experience soon proved that with respect to the larger movements of traffic between distant points the consolidation of separate railroads into organizations with lateral connections forming great systems have served important economies both of transportation and of trade. These are to-day vital to the commercial prosperity of the country.

But a senseless prejudice has been aroused by the apprehension that the elimination of competition between rival railroads tends to advance rates. Experience, however, has clearly proved that this assumption is absolutely erroneous. It is a fact of experience beyond all doubt that rates on the immense railroad systems have been greatly reduced. Especially is this true with respect to the great railroad organizations extending from the middle west, and notably on the lines extending from Chicago and St. Louis to the Atlantic seaboard; on the lines extending from the centers of trade in the Southern States to the great commercial centers of the Northern States, and more especially on the great transcontinental lines.* This baseless assumption

* According to the official report of the National Bureau of Statistics the average rate per ton per mile on the three principal trans-continental railroads of the United States fell from 2.21 cents in 1880 to .94 cents in 1905. During the same period—1880 to 1905—there was a corresponding reduction in the average rate per ton per mile of 30 per cent. on the New York Central System and of 33 per cent. on the Pennsylvania Railroad and its branches east of Pittsburg.

that the formation of great railroad organizations tends to increase rates through the elimination of competition between rival lines, entirely overlooks one of the most important commercial facts of the age, namely, the clearly established fact that commercial forces created by the facilities for railroad transportation exercise a vastly greater influence over rates than do the railroads themselves. also that railroad extensions, and especially the formation of great railroad organizations or systems extending through different States and connecting distant trade centres and areas has vastly increased the competitive power over rates exerted by the commercial and industrial forces of this country, which competition of commercial forces is the real cause of the reduction of 26 per cent in the average cost of transportation on railroads in the United States during the last twenty years, or from the year 1885 to the year 1905.* This overshadowing fact is fast gaining the credence of the trade bodies and other commercial influences of the country which will ere long suppress the senseless tirade against the great railroad organizations and in advocacy of the various wild schemes in favor of governmental administration of the railroads. At the same time the railroads will stand with the commercial interests of the country in favor of all just and reasonable rates under all just and reasonable regulations.

In view of the foregoing facts and considerations it appears to me that the events of the present time consti-

* Correlatively, the fact that railroad combinations between competing lines has not resulted in advanced rates, but in greatly reduced rates, affords conclusive evidence of the fact that such reduction in rates has been due entirely to the absolute control over rates exercised by commercial forces mainly created by the railroads.

tute it the most critical period in the entire history of railroad transportation in the United States. While questions affecting the general subject may be debated during the present session of the 59th Congress, the real struggle will probably not begin before the next, or 60th Congress, which will convene on December 2nd, 1907. The nature and extent of governmental regulation of the railroads may become the paramount political issue of the campaign of the year 1908.

JOSEPH NIMMO, JR.

WASHINGTON, D. C.,
December 22, 1906.

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